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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

File: WAC 00 100 51224

Office: CALIFORNIA SERVICE CENTER

Date: MAY 09 2002

IN RE: Petitioner:  
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act,  
8 U.S.C. 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition remanded for further action and consideration.

The petitioner is engaged in the business of exporting consumer products and the wholesale and retail of consumer electronics. The petitioner seeks to continue the employment of the beneficiary in the United States as its executive vice-president. The director determined that the beneficiary would not be employed in an executive or managerial capacity.

On appeal, counsel for the petitioner asserts that the Service reviewed the wrong petition. Counsel also submits additional documents.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

8 C.F.R. 214.2(1)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

The United States petitioner is a California company incorporated in May of 1997. In the initial petition the petitioner requested that the employment of the beneficiary in the United States be continued as its executive vice-president. The petitioner described the beneficiary's duties generally as being responsible for "the management and control of the finance of the company," and supervise[ing] professionals and staff and provide[ing] directions for policy, program and operations implementation."

In the director's decision, the director stated that the petitioner sought to continue the beneficiary's employment in the United States as a chief financial officer and manager. The director also referenced an organizational chart allegedly provided by the petitioner stating that it listed the beneficiary as the supervisor of one employee, a sales supervisor who did not supervise anyone. The director also re-stated the alleged description of the beneficiary's duties as provided by the petitioner as, "formulating price policies, determining expenditures, including cost/benefit analysis."

On appeal, counsel for the petitioner asserts that the petitioner did not provide an organizational chart with the petition but is providing one on appeal. Counsel also asserts that the job description and job title recited by the director is different than the one provided by the petitioner. Counsel also provides additional California Employment Development Department (EDD) Form DE-6 listing its employees from April 1, 1999 through March 31, 2000. Counsel also notes that the petitioner was "not given the opportunity to respond to any alleged shortcomings of the petition."

Upon review, counsel's assertions are persuasive. The director either reviewed the wrong petition or did not adequately review this petitioner's petition. In addition, the director did not give the petitioner notice of her intent to deny the petition, as required by 8 C.F.R. 214.2(l)(8)(i). For this reason, the director's decision will be withdrawn. The petition will be remanded to the director for further consideration and entry of a new decision.

However, review of the current record reveals that the petitioner did not sufficiently establish that the beneficiary would be employed in a managerial or executive capacity. We note that the initial letter submitted with the petition indicated that the petitioner employed two individuals. The accompanying EDD Form De-6 confirmed the employment of only two individuals. The subsequent claims by the petitioner that it employs additional individuals must be explained. Also as noted by the director, though perhaps in reference to another petitioner, the position description for this beneficiary and this petitioner's purported employees is general in nature and not sufficient to support a finding that the beneficiary will be employed as an executive or manager.

The petitioner has also provided inconsistent evidence regarding its ownership and control. The petitioner has provided a stock certificate indicating that a Canadian company owns its shares. However, the Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return reflects on Schedule K that the petitioner is not owned by a corporation or by a foreign entity. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to

explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

As the record does not establish that the beneficiary will function in a managerial or executive capacity, or that the petitioner maintains a qualifying relationship with the claimed overseas parent company, this petition may not be approved.

Accordingly, this matter will be remanded for the purpose of a new decision. The director must afford the petitioner reasonable time to obtain evidence on these issues and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility.

**ORDER:** The director's decision of April 20, 2000 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision.